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| 09/752,611 | 12/29/2000 | Steven E. Barile | 42390P9914 | 1292 |

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Charles A. Mirho
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP
7th Floor
124000 Wilshire Boulevard
Los Angeles, CA 90025

EXAMINER

GRAHAM, ANDREW R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2644

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|-------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/752,611 | BARILE, STEVEN E. | |
| | Examiner | Art Unit | |
| | Andrew Graham | 2644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Drawings

1. Replacement drawings were received on November 19, 2004. These drawings are approved by the examiner and have been entered into the case. Accordingly, previous objections to the drawings are hereby withdrawn.

Response to Arguments

Applicant's arguments filed November 11, 2004 have been fully considered but they are not persuasive.

On page 8, line 29 and page 9, line 1, the applicant has stated, "Applicants respectfully assert that rendering of audio information from a synthesizer is not concatenation". The examiner respectfully notes, however, that "rendering" alone was not relied upon as teaching the concept in the previous office action. Rather, the teaching of such a limitation was attributed to "synchronism". In the context of Sato, voice data is applied to an output speaker (14) through a D/A converter (13b)(0059). This is the same speaker (14) through which music data is output (0059). A voice synthesizer (23) produces the voice data that corresponds to the text or metadata information and a timing unit 22 is used to designate when, with respect to the reproduced music data, the voice data is reproduced (0068). One timing listed by Sato as a possible the respective timing is the end of a piece of music (0070). "Concatenate" by definition means "to link in series or chain". Therefore, the "end of a piece of music" timing for respective reproduction or synchronism thus equates to

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"concatenating at least a portion of an audio format (analog signal on input to 14) of the descriptive information" by virtue of the fact that both analog waves, one for the music data and one for the voice data, are applied from their respective D/A converters (13a,13b) to the same connector interconnected to the same speaker (14)(Figure 2). As noted in the previous office action, however, such "linking" in series is performed after the music data has been converted to an analog wave signal, and thus is not done "to the audio file"

On page 9, lines 23-27, the applicant has stated, "The Fitzpatrick input file is not an audio file - it may include video elements, graphical elements, document format control, etc" and "Fitzpatrick thus takes a file of one type (not an audio file) and generates an output file of another type (an audio file)". The examiner respectfully submits that the rejection is based on Sato in view of Fitzpatrick, not Fitzpatrick alone. Sato clearly teaches the use of an audio file (MP3 format, 0065, 0097). Such a file includes text information with music data (Figure 9, 0065). The applicant's admitted prior art defines such text information stored with music data as an audio file, as is well known in the art. The system of Fitzpatrick handles entities from an input file, and combines them into a single output file (col. 3, lines 41-53; col. 4, lines 58-65). The possible entities in an input file of Fitzpatrick include audio sounds and text words or phrases that can be converted to spoken words or phrases (col. 3, lines 48-61). The audio file of Sato comprises such entities. Accordingly, the processing of Fitzpatrick is at least

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applicable to the entities of Sato for creating a common output file from said entities. The fact that the system and method of Fitzpatrick includes capabilities beyond or in addition to the handling of such entities, does not preclude the application of the teachings to such entities. The processing illustrated in the flowchart of Figure 2 may proceed from START to STOP while processing (along 260-270) human discernable entities (such as sound and text to be converted) without processing (along 320-380) such non-discernable entities. As such, the resulting combination of the teachings of Sato and Fitzpatrick at least include "reading descriptive information... for the audio file" and "concatenating... to the audio file".

On page 9, line 30 and page 10, lines 1 and 4-8, the applicant has stated, "Indeed, Fitzpatrick teaches away from such an approach" and "If Fitzpatrick did, as the Office Action claims, teach concatenating at least a portion of an audio format of the descriptive information to the-audio file such that the initial audio and metadata were contained in an input audio file, then no non-discernable data would be present in such input file, and the motivation behind the Fitzpatrick disclosure would be obviated". The examiner respectfully disagrees. As stated above, the teaching that the system and method of Fitzpatrick includes capabilities beyond or in addition to the handling of such entities, does not preclude the application of the teachings to such entities. The application of Fitzpatrick does not render the methods of Sato or Fitzpatrick unsatisfactory for its

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intended purpose, nor does it change the principle operation of the system of Sato.

On page 10, lines 24-27 and page 11, lines 17-18, the applicant has stated, "There is absolutely no suggestion in either Sato or Fitzpatrick that such digital processing would have not required hardware capable of efficient processing for the real time production of output as a motivating factor to combine their teachings with each other" and "there must be some objective reason to modify the teaching of the reference". The examiner respectfully submits that such motivation is based on the teachings and suggestion of Fitzpatrick. Specifically, Fitzpatrick states that an intermediate output audio file is not required when the hardware processes efficiently, wherein the output is produced in real time (col. 5, lines 8-13). Accordingly, the converse is true that if the hardware does not process efficiently, an intermediate file is required by the standards of Fitzpatrick. Sato does not teach the production of a single, intermediate file, but rather the individual production of music and voice files, which are produced across separate D/A converters (13a,13b) through separate calls to reproduce the respective data. Such production of data, according to the standards of Fitzpatrick, requires the efficient processing of the data from the audio file of Sato, including the reading of music data and synthesis of voice data. Lifting or reducing efficient processing requirements or standard would have made more components available for a hardware implementation of the composite device. The advantage of the

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intermediate file arrangement of Fitzpatrick also manifests itself in other forms; for example, the "end of piece" timing of the system of Sato requires the use of two D/A converters (13a,13b), whereas the sequential output of audible entities in the system of Fitzpatrick only requires a single D/A conversion device to produce the same analog signal construction (0065,0090 of Sato, col. 5, line 67; col. 6, lines 1-3). This response also applies to the relevant arguments presented on page 12, lines 28-30 and page 13, lines 1-2.

On page 11, lines 24-25, the applicant has stated, "Applicant traverses this approach because the elements of Claim 1 and Claim 6 are not identical". The examiner respectfully submits that some elements ("A method", "reading... for the audio file", and "at least a portion... the audio file") are identical. The only elements that are not identical "mixing..with" and "generating... from the mixing" are explicitly addressed in the office action.

On page 12, lines 7-8, the applicant has stated, "Applicant respectfully reiterates that it is exact claim language of Claim 6 that must be addressed, not a 'concept'". The examiner respectfully submits that both the function or "concept" as well as its implementation as delimited by the claim language were addressed in the previous office action. The system of Sato teaches the electrical mixing of analog signals (inherent, text information is read out at time after start timing at which music data is being reproduced, occurs on interconnected line with D/A converters 13a,13b and speaker 14, as per Figure 2). The "an audio format" clause was addressed in

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the rejection of Claim 1, and is recited in an identical manner in Claim 6. The modification of Sato by Fitzpatrick involved the production of an intermediate audio output file for output. Such modification would have involved applying the "period of time passing" timing to the music data and voice data of Sato to form the intermediate file of Fitzpatrick. Such an operation of combining two audio data into a single file is substantially well known in the art, and is suggested by the teachings of Sato in view of Fitzpatrick.

On page 12, lines 12-14 and 17-18, the applicant has stated, "Applicant does not agree that the limitation of 'mixing an audio format of at least a portion of the descriptive information with the audio file' is met by the teaching of a delayed synchronism option in Sato" and "The Office Action asserts that Sato teaches 'mixing in the digital domain'". The examiner respectfully submits that no such equivalency or assertion was made in the previous office action. Rather, the timing option of Sato was cited "in view of the desirable modification proposed above" (page 6, lines 8-9, previous office action) which included the teachings of Fitzpatrick. As described above, the system of Sato teaches the electrical mixing of analog signals (inherent, text information is read out at time after start timing at which music data is being reproduced, occurs on interconnected line with D/A converters 13a, 13b and speaker 14, as per Figure 2). The limitation of "with the audio file" is suggested by this teaching of Sato when considered in view of the teachings of

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Fitzpatrick, which disclose the desirability of producing an intermediate audio output file from multiple sets of audio data.

The arguments related to Claims 2-5 and 7-19 repeat or depend from the remarks presented in regards to Claims 1 and 6. As these remarks have been addressed above, the rejections of Claims 2-5 and 7-19 have been reviewed and respectively maintained herein.

Drawings

2. Replacement drawings were received on November 11, 2004. These drawings are approved and have been entered into the application, and the previous, relevant objection are hereby withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 5-8, 10-12, 15-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (US 2001/0027396 A1) in view of Fitzpatrick et al (USPN 5675708). Hereafter, "Fitzpatrick et al" will be referred to as "Fitzpatrick".

Sato discloses the audible synthesis an emission of data related to an audio file, relative to the playing of the audio file. The data

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involves information about the audio file ranging from the title to the type of the music (page 3, para. 0065, and Figure 90). The data is passed through a voice synthesizer (23) to convert the data into an audible output compatible format and the data is output in various forms of in synchronism with the audio file, ranging from the start or end of the audio file to a detected volume condition of the file (para. 0053, 0074, 0075). Regarding **Claim 1**, the selection of the relevant audio data with the extraction unit (21) for the voice synthesizer (23) reads on "reading descriptive information about an audio file from meta-data for the audio file" (para. 0061). The synchronism between the playing of the audio file and the audio data from the synthesizer reads on the concept of "concatenating at least a portion of an audio format of the descriptive information". However, the data from the synthesizer (23) is passed through a D/A converter before it is chronologically associated with the audio data of the audio file.

Thus, Sato does not clearly specify:

- that the concatenating of the at least a portion of the audio format of the descriptive information is executed to an audio file

Fitzpatrick discloses a system for converting various forms of multimedia data into audio media. The process involves the inputting of a file or multimedia data stream (col. 3, lines 17-22). The process involves aligning entities from a file on a modified output file (col. 3, lines 66-67 and col. 4, lines 1-6). Entities include

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text word or phrases that may be converted to a spoken word, as well as audio elements (col. 3, lines 43-46 and 57-61). The entity that is written to output file is the associated digitized audio format of the entity (col. 4, lines 1-2). Fitzpatrick also discloses a process for providing an audio equivalent for data that does not have a standard, discernable equivalent (col. 4, lines 8-34). The concept of writing multiple digital audio entities to a file, in view of the effective signal composition of Sato, reads on "concatenating the descriptive at least a portion of an audio format of the descriptive information to the audio file".

To one of ordinary skill in the art at the time the invention was made, it would have been obvious to perform the signal combination of Sato in the digital domain through a method such as the subsequent writing of entities as disclosed by Fitzpatrick. The motivation behind such a modification would have been that such digital processing would have not required hardware capable of efficient processing for the real time production of output.

Regarding **Claim 2**, the voice synthesizer (23) of Sato converts the text information to voice data, which is provided through D/A converters (13a,13b) to be emitted by a loudspeaker, the functions of the synthesizer reading on "converting the descriptive information to the audio format prior to concatenating" (para. 0059). Fitzpatrick also notes certain text data as convertible to a spoken phrase (col. 3, lines 57-61).

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Regarding **Claim 5**, one embodiment of Sato involves deriving the data information from the ID3 tag of an MPEG-1 Layer 3 format, which reads on "the audio file comprises the metadata" (para. 0065). Sato also notes that such data can be shown on a device with a text display, and that the disclosed combination may be executed on a device with a display, which provides support for retaining such data in the output file produced by Fitzpatrick (para. 0007,0094).

Regarding **Claim 6**, please refer to the like teachings of Claim 1, noting that one of the synchronism options involves outputting the data information at a certain time after the start of the playing of an audio file, which reads on the concept of "mixing" (para. 0072). It is noted herein that the implementation of such a process, in view of the desirable modification proposed above, would involve performing such mixing in the digital domain, again, with the motivation being the elimination of the requirement of components capable of real time processing. Such digital addition or mixing is substantially well known in the art, support for which can be found, for example, in Farhangi et al (USPN 5647008), which has been included with this office action. In the teachings of Fitzpatrick, the resultant signal is written to a new file designated as an output file (col. 3, lines 22-24 and col. 4, lines 1-2 and 63-67). This process of writing of entities reads on "generating a new audio file containing audio data resulting from the mixing".

Regarding **Claim 7**, please refer to the like teachings of Claim 2.

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Regarding **Claim 8**, the start reproduction time is one of the synchronization options, which reads on "at least a portion of the audio format of the descriptive information is mixed with audio at the beginning of the audio file" (para. 0070).

Regarding **Claim 10**, please refer to the like teachings of Claim 5. Regarding **Claim 11**, please refer to the like teachings of Claim 1, noting that Sato discloses the text information read out program as being recorded on a computer readable recording medium (para. 0108). Regarding **Claim 12**, please refer to the like teachings of Claim 2. Regarding **Claim 15**, please refer to the like teachings of Claim 5. Regarding **Claim 16**, please refer to the like teachings of Claim 1, noting that the program is installed on a computer system (Figure 2) from a readable recording medium (para. 0108). Regarding **Claim 17**, please refer to the like teachings of Claim 2. Regarding **Claim 20**, please refer to the like teachings of Claim 5.

5. **Claims 3-4, 9, 13-14, and 18-19** are rejected under 35

U.S.C. 103(a) as being unpatentable over Sato in view of Fitzpatrick as applied above, and further in view of Yumura et al (USPN 5834670). Hereafter, "Yumura et al" will simply be referred to as "Yumura".

As detailed above, Sato discloses a system for selectively including information about an audio file into the audible playing of the audio file. Sato discloses a variety of timing at which the audio file information may be emitted by the speaker (14) in relation to the playing of the audio file. Fitzpatrick discloses the notion of

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digitally combining audible parts of an input file into a different file.

However, Sato in view of Fitzpatrick does not specify:

- that the audio format of the descriptive information is concatenated to the beginning of the audio file

Yumura discloses a system for audibly presenting information about a song and the user requesting a song in a karaoke system. The audio file name and requester's name are input to a local terminal of the karaoke system with an input device (23). This information, processed by a speech synthesis unit (25) influenced by genre of the song, is output to the speakers during an introduction, interlude, or just before a song (col. 3, lines 13-35). The playing of the song information data reads on "at least a portion of the audio format of the descriptive information is concatenated to the beginning of the audio file".

To one of ordinary skill in the art at the time the invention was made, it would have been obvious to incorporate the emission of the song data before the playing of song as taught by Yumura into the system of Sato in view of Fitzpatrick. The motivation behind such a modification would have been that such an arrangement would have enabled users of the system to directly identify information regarding a song to be played before the actual playing of the song. Playing the song data before the actual song would have left the song to be heard in its original form and prevented any unpleasant sound caused by the overlapping of the music and synthesized voice data.

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Regarding **Claim 4**, the system of Yumura involves a main computer source which stores song information and a terminal computer source which requests and plays the stored music (col. 2, lines 44-67). Song data is transmitted from the main unit (1) and the terminal (2), and the synthesis of the song title and other information involves the use of data received in this transmission (col. 3, lines 15-18). This aspect of the invention, which improves the quality of the synthesized audio, reads on "the concatenating is performed in response to an operation to transfer the audio file from a first computer system to a second computer system".

Regarding **Claim 9**, please refer to the like teachings of Claim 4.
Regarding **Claim 13**, please refer to the like teachings of Claim 3.
Regarding **Claim 14**, please refer to the like teachings of Claim 4.
Regarding **Claim 18**, please refer to the like teachings of Claim 3.
Regarding **Claim 19**, please refer to the like teachings of Claim 4.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Graham whose telephone number is 571-272-7517. The examiner can normally be reached on Monday-Friday, 8:30 AM to 5:00 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AK

Andrew Graham
Examiner
A.U. 2644
ag


SINH TRAN
SUPERVISORY PATENT EXAMINER